

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

AGUSTIN GALICIA II,

Case No. 2:17-CV-2495 JCM (CWH)

**Plaintiff(s),**

## ORDER

V.

## PLUSFOUR, INC.,

Defendant(s).

Presently before the court is defendant PlusFour Inc.'s motion to dismiss. (ECF No. 8). Plaintiff Agustin Galicia II filed a response (ECF No. 18), to which defendant replied (ECF No. 19).

## I. Facts

The instant action involves allegations of inaccurate credit reporting in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (2011) (the “FDCPA”), and the Fair Credit Reporting Act, 15 U.S.C. § 1681 (2011) (the “FCRA”).

Plaintiff alleges that defendant erroneously reported three collection accounts on plaintiff's national credit profiles. (ECF No. 7 at 3). Plaintiff also alleges that defendant's report included incorrect and inaccurate debt balances because the charges related to these three accounts were the result of identity theft. (ECF No. 7 at 2). According to plaintiff, defendant reported the first two erroneous accounts in 2013, and defendant reported the third erroneous account "later in 2014."<sup>1</sup>

*Id.*

<sup>1</sup> Plaintiff alleges violations with respect to three separate collection accounts—two collection accounts in 2013 and one collection account in 2014—even though he refers to the 2014 account as a “second erroneous account.” (ECF No. 7).

1 Plaintiff asserts that he contacted defendant twice to dispute the erroneous accounts. *Id.*  
2 The first time plaintiff reports that he contacted defendant about the dispute was in April 2014.  
3 Plaintiff claims that he contacted defendant a second time to dispute the erroneous accounts after  
4 defendant reported the third erroneous account in 2014. Plaintiff also claims, in his response to  
5 defendant's motion, that he disputed these three erroneous accounts with the national credit  
6 agencies (i.e., credit reporting agencies or "CRA's"), including TransUnion, Experian, and  
7 Equifax in September of 2016. *Id.*; (ECF No. 7 at 3; ECF No. 18 at 13).

8 Plaintiff alleges that defendant unlawfully ignored his dispute in violation of the FDCPA,  
9 the FCRA, and industry standards, causing harm to plaintiff's credit , impairing plaintiff's access  
10 to financing, as well as harassing, abusing and oppressing plaintiff until plaintiff suffered  
11 "meaningful emotional distress," including excessive worry, frustration, sleeplessness, anger,  
12 humiliation, chagrin, embarrassment, and "other mental anguish." (ECF No. 7 at 3-5).

13 Plaintiff further asserts that defendant continued to report the disputed balance to Equifax,  
14 failed to conduct an adequate investigation of the debts in dispute, and failed to remove the  
15 erroneous debts even after defendant confirmed the debts were a result of identity theft and did not  
16 belong to plaintiff. (ECF No. 17).

17 On September 26, 2017, plaintiff filed his original complaint. (ECF No. 1). Plaintiff filed  
18 the underlying amended complaint on January 5, 2018, for damages, alleging two claims for relief  
19 against defendant: (1) violations of the FDCPA; and (2) violations of the FCRA. (ECF No. 7).

20 In the instant motion, defendant moves to dismiss plaintiff's claims pursuant to Federal  
21 Rule of Civil Procedure 12(b)(6). (ECF No. 8).

22 **II. Legal Standard**

23 When considering a Rule 12(b)(6) motion for failure to state a claim, the court must accept  
24 as true all factual allegations in the complaint as well as all reasonable inferences that may be  
25 drawn from such allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150, n.2 (9th Cir. 2000). Such  
26 allegations must be construed in the light most favorable to the moving party. *Shwarz v. U.S.*, 234  
27 F.3d 428, 435 (9th Cir. 2000). Generally, the court should only look to the contents of the

1 complaint during its review of a 12(b)(6) motion to dismiss; however, the court may consider  
2 documents attached to the complaint or referred to in the complaint whose authenticity no party  
3 questions. *Id.*; see also *Durning v. First Bos. Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987).

4 The purpose of a Rule 12(b)(6) motion to dismiss for failure to state a claim is to test the  
5 legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The issue  
6 is whether a claimant is entitled to offer evidence to support the claims, not whether the claimant  
7 will ultimately prevail. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997)  
8 (quotations omitted).

9 A properly pled complaint must provide “[a] short and plain statement of the claim showing  
10 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550  
11 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands “more  
12 than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”  
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). “Nor does a complaint suffice if it  
14 tenders ‘naked assertion[s]’ devoid of ‘further factual enhancements.’” *Id.* (quoting *Twombly*, 550  
15 U.S. at 557).

16 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550  
17 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual  
18 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation  
19 omitted).

20 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply  
21 when considering motions to dismiss. First, the court must accept as true all well-pled factual  
22 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.  
23 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory  
24 statements, do not suffice. *Id.* at 678.

25 Second, the court must consider whether the factual allegations in the complaint allege a  
26 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint  
27 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the  
28 alleged misconduct. *Id.* at 678.

1           Where the complaint does not permit the court to infer more than the mere possibility of  
2 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.*  
3 (internal quotation marks omitted). When the allegations in a complaint have not crossed the line  
4 from conceivable to plausible, plaintiff’s claim must be dismissed. *See Twombly*, 550 U.S. at 570.

5           The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,  
6 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

7           First, to be entitled to the presumption of truth, allegations in a complaint or  
8 counterclaim may not simply recite the elements of a cause of action, but must  
9 contain sufficient allegations of underlying facts to give fair notice and to enable  
10 the opposing party to defend itself effectively. Second, the factual allegations that  
are taken as true must plausibly suggest an entitlement to relief, such that it is not  
unfair to require the opposing party to be subjected to the expense of discovery and  
continued litigation.

11           *Id.*

### 12           **III. Discussion**

13           Defendant moves to dismiss plaintiff’s amended complaint. Plaintiff’s claims will be  
14 addressed in turn to determine whether dismissal is appropriate.

#### 15           **A. The FCRA**

16           According to plaintiff’s amended complaint, defendant allegedly violated the FCRA by  
17 reporting inaccurate information to CRAs, failing to adequately investigate plaintiff’s dispute, and  
18 failing to report or correct the disputed balance to CRAs. (ECF No. 7). In response to defendant’s  
19 motion to dismiss, plaintiff asserts that each independent reporting of the erroneous accounts by  
20 defendant to CRAs constituted a discrete act that re-started the two-year statute of limitations. *Id.*  
21 at 6-8.

22           On the other hand, defendant argues that dismissal is proper because plaintiff’s FCRA  
23 claims are time-barred and because plaintiff’s complaint fails to plead a violation of the FCRA as  
24 it pertains to defendant as a furnisher of information to CRAs. (ECF No. 19 at 4-7). To the extent  
25 plaintiff alleges that the statute of limitations should re-start anew because each subsequent  
26 reporting of his claims was a discrete incident, defendant contends that additional complaints made  
27 about the same erroneous information does not re-start the statute of limitations. *Id.*

28

1        Congress enacted the Fair Credit Reporting Act in 1970 “to ensure fair and accurate credit  
2 reporting, promote efficiency in the banking system, and protect consumer privacy.” *Safeco Ins.*  
3 *Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007). “As it relates to furnishers of information to consumer  
4 reporting agencies, the FCRA sets forth two general requirements: the duty to provide accurate  
5 information, 15 U.S.C. § 1681s-2(a), and the duty to investigate the accuracy of reported  
6 information upon receiving notice of a dispute, § 1681s-2(b).” *Waldrop v. Green Tree Servicing,*  
7 *LLC*, No. 214CV2091JCMGF, 2015 WL 5829879, at \*3 (D. Nev. Oct. 5, 2015) (quoting  
8 *Cisneros v. Trans Union, LLC*, 293 F. Supp. 2d 1167, 1174 (D. Haw. 2003)).

9        The FCRA expressly creates a private right of action for willful or negligent  
10 noncompliance with its requirements. 15 U.S.C. § 1681n-o; *see also Nelson v. Chase Manhattan*  
11 *Mortg. Corp.*, 282 F.3d 1057, 1059 (9th Cir. 2002). Further, the limitations period for a claim  
12 under the FCRA is the earlier of two years after the date of discovery by the plaintiff of the  
13 violation or five years after the date on which the violation occurred. 15 U.S.C.A. § 1681p.

14        Here, plaintiff discovered the violations and began reporting the inaccuracies in his credit  
15 reports in 2013 and “later in 2014.” Plaintiff filed suit on September 26, 2017. All of the  
16 transactions plaintiff raises in his amended complaint occurred, at the latest, before January 1,  
17 2015. The only events in plaintiff’s amended complaint that occurred after January 1, 2015, are  
18 his additional reports to defendant and CRAs that the information was incorrect.

19        Other courts have found, and this court agrees, that additional reports such as these cannot  
20 restart the limitations period because to do so would allow plaintiff to indefinitely extend the  
21 limitations period by simply sending another complaint letter to CRAs, which undermines the  
22 statute of limitations set by Congress. *Bittick v. Experian Info. Sols., Inc.*, 419 F. Supp. 2d 917,  
23 918–919 (N.D. Tex. 2006); *see also Hancock v. Charter One Mortg.*, No. 07-15118, 2008 WL  
24 2246042, at \*2 (E.D. Mich., May 30, 2008) (holding that subsequent dispute letters regarding the  
25 same erroneous information does not restart the statute of limitations period when plaintiffs knew  
26 of the errors on their credit report more than two years before they filed suit); *Blackwell v. Capital*  
27 *One Bank*, No. 606CV066, 2008 WL 793476, at \*3 (S.D.Ga., Mar. 25, 2008) (holding that

1 permitting claims to go forward on the basis of subsequent complaint letters would allow plaintiffs  
2 to indefinitely extend the limitations period and render it a nullity, “an anomalous result”).  
3

4 Here, plaintiff asserts that three accounts were erroneously reported by defendant to CRAs,  
5 two in 2013, and one “later in 2014.” (ECF No. 7, 18). Based upon plaintiff’s own assertions,  
6 plaintiff filed his complaint outside the two-year statute of limitations because plaintiff discovered  
7 these erroneous accounts in 2013 and 2014. *Id.* Despite plaintiff’s allegations to the contrary, his  
8 subsequent reports disputing these three accounts do not constitute discrete events such that they  
9 would toll or re-start the statute of limitations. *See Bittick*, 419 F. Supp. 2d at 918–919.  
10

11 Plaintiff’s FCRA claims are time-barred because plaintiff did not file his complaint until  
September 26, 2017. *Id.* Accordingly, the court will grant defendant’s motion to dismiss  
plaintiff’s FCRA claims with prejudice.  
12

## B. The FDCPA

13 The FDCPA provides protection from abusive debt collection practices. 15 U.S.C. § 1692  
14 (2011). “The FDCPA bars the use of any false, deceptive, or misleading representation in  
15 connection with the collection of any debt.” *Cruz v. Int’l Collection Corp.*, 673 F.3d 991, 997 (9th  
16 Cir. 2012) (citing 15 U.S.C. § 1692e). The FDCPA further prohibits “[t]he collection of any  
17 amount . . . unless such amount is expressly authorized by the agreement creating the debt or  
18 permitted by law.” *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 950 (9th  
19 Cir. 2011) (quoting 15 U.S.C. § 1692f(1)).  
20

21 In order to bring a claim under the FDCPA, a plaintiff must file his or her complaint within  
one year from the date on which the violation occurs. 15 U.S.C. § 1692k(d); *see e.g., Purnell v.*  
22 *Arrow Fin. Servs., LLC*, 303 F. App’x 297, 302 (6th Cir. 2008) (holding that “violation[s] must  
23 occur within the limitations period, not just be the later effects of an earlier time-barred violation”);  
*Pittman v. J.J. Mac Intyre Co., of Nev., Inc.*, 969 F. Supp. 609, 611 (D Nev. 1997) (holding that  
24 claims occurring outside the one-year statute of limitations are not actionable).  
25

26 Here, plaintiff alleges that defendant violated various provisions of the FDCPA in relation  
27 to two “erroneous collection accounts” when defendant reported these accounts to national credit  
28 agencies in 2013. (ECF No. 7 at 3). Plaintiff alleges that he contacted defendant immediately

1 after the violations occurred. (ECF No. 7). However, plaintiff filed his original complaint on  
2 September 26, 2017. (ECF No. 1). Thus, plaintiff's claims under the FDCPA regarding the 2013  
3 debts are barred because he did not bring his claims within one year from the date of the violations.  
4 *Id.*; *see also* 15 U.S.C. § 1692k(d).

5 Plaintiff also alleges that defendant reported a third erroneous account to CRAs “[l]ater in  
6 2014.” (ECF No. 7, 18). Plaintiff alleges that he contacted defendant immediately after the  
7 violation occurred. (ECF No. 7). Further, plaintiff received a credit report on August 22, 2016,  
8 which included all three of the alleged erroneous accounts. (ECF No. 7 at 13). However, plaintiff  
9 did not file his complaint until September 26, 2017. *Id.* Therefore, the 2014 debt is likewise  
10 barred. *Id.*

11 Plaintiff asserts that each independent reporting of the erroneous accounts by defendant to  
12 CRAs constituted a discrete act that re-started the two-year statute of limitations. *Id.* at 6-8.  
13 However, as the court held in the context of plaintiff's FCRA claim, the limitations period does  
14 not re-start solely because of subsequent additional reports of the same erroneous accounts.  
15 *Bittick*, 419 F. Supp. 2d at 918–919; *see also Hancock v. Charter One Mortg.*, 2008 WL 2246042,  
16 at \*2; *Blackwell v. Capital One Bank*, 2008 WL 793476, at \*3.

17 Like plaintiff's FCRA claims, plaintiff's FDCPA claims are time-barred because he did  
18 not file his complaint until September 26, 2017. Accordingly, the court will grant defendant's  
19 motion to dismiss plaintiff's FDCPA claims with prejudice.

20 **IV. Conclusion**

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to  
23 dismiss (ECF No. 8) be, and the same hereby is, GRANTED consistent with the foregoing.

24 IT IS FURTHER ORDERED that plaintiff's amended complaint be, and the same hereby  
25 is, DISMISSED WITH PREJUDICE.

26 ...

27 ...

28 ...

The clerk is instructed to enter judgment accordingly and close the case.

DATED July 23, 2018.

Xenos C. Mahan  
UNITED STATES DISTRICT JUDGE